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Before the FEDERAL COMMUNICATIONS COMMISSION JUN 2 0 1994 Washington, D.C. 20554

In the Matter of)

Implementation of Sections 3(n)) GN Docket No. 93-252 and 332 of the Communications)

Act)

Regulatory Treatment of Mobile)

Services)

COMMENTS OF SPRINT CORPORATION

Sprint Corporation ("Sprint"), on behalf of the United and Central Telephone companies, Sprint Communications Company L.P., and Sprint Cellular, respectfully submits the following Comments in response to the May 20, 1994 FNPRM. In the FNPRM the Commission seeks to further the transition to the mobile services regulatory regime envisioned by the Budget Act. 2

Through the Budget Act Congress required the creation of a new regulatory scheme providing regulatory parity among providers of commercial mobile services. On February 3, 1994 the Commission adopted the <u>Second R&O</u> that established a new regulatory structure designed to provide this required

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^{1. &}lt;u>In the Matter of Implementation of Section 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services,</u> GN Docket No. 92-252, <u>Further Notice of Proposed Rule Making</u>, FCC 94-100, released May 20, 1994 ("FNPRM").

^{2.} Omnibus Budget Reconciliation Act of 1993. Pub. L. No. 103-66, Title VI, Section 6002(b), 107 Stat. 312, 392 (1993) ("Budget Act").

symmetrical regulatory treatment of mobile service providers.³
In this FNPRM the Commission proposes technical, operational, and licensing requirements for mobile services to further ensure that substantially similar services in the mobile services marketplace are subject to comparable regulatory treatment.

The Commission also seeks comment on whether it should adopt a cap on the amount of spectrum that CMRS licensees may aggregate in a given geographic area. The Commission is concerned that without such a cap, a licensee could aggregate sufficient spectrum to exert market power and thereby thwart development of an expanded and diversified CMRS marketplace.

The Commission's concerns may be well founded. Given a limited amount of spectrum it is clear that if a provider can acquire all of the available spectrum in a particular market then that provider can stifle competition. However, it is not clear that there should be one spectrum cap applicable to all commercial mobile services. What is clear is that the spectrum cap adopted should apply to services that are substantially similar to each other.

In the <u>Second R&O</u> the Commission adopted, and recently affirmed in its <u>Broadband PCS MO&O</u>, eligibility requirements for cellular providers who seek PCS licenses in their cellular

^{3.} In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411 (1994) ("Second R&O").

service areas that effectively cap the amount of PCS spectrum a cellular provider can acquire.⁴ The Commission was concerned that without such a cap an incumbent cellular provider might be able to obtain sufficient spectrum to effectively exercise market power within its geographic territory. This could preclude effective competition by other CMRS providers of substantially similar CMRS services.

In its Petition for Reconsideration of the <u>Second R&O</u>,

Sprint argued that "Because ESMR will compete with cellular and

PCS, Sprint believes that ESMR services should be subject to the

same eligibility rules as cellular." U.S. West also requested

that the same eligibility restrictions applied to cellular

providers in the <u>Second R&O</u> be applied to wide-area SMR

operations.6

^{4.} See, Second Report and Order, fn 3 herein and Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90-314, Memorandum Opinion and Order, FCC 94-144, released June 13, 1994 ("Broadband PCS MO&O").

^{5.} Sprint Corporation Petition for Reconsideration of the <u>Second R&O</u>, filed December 8, 1993 at p. 13. As used in Sprint's PFR, the term ESMR means Enhanced Specialized Mobile Radio and refers to the same SMRs that the Commission calls wide-area SMR. These wide-are SMR providers are SMR licensees that develop wide-area multichannel interconnected systems.

^{6.} U.S. West Petition for Reconsideration of the Second R&O at 16.

However, in its Broadband PCS MO&O, the Commission determined that that order was not the appropriate forum to consider application of the eligibility requirement to wide-area SMRs; it instead deferred consideration of the issue to this FNPRM. Accordingly, Sprint again urges the Commission to subject wide-area SMRs to the same PCS eligibility rules as apply to cellular providers. The Commission notes that "These similarities [between cellular and wide-area SMRs] suggest that wide-area SMR service and cellular service could be viewed as substantially similar for purposes of the statute."8 Sprint agrees that the services are substantially similar and that the competitive concerns that led the Commission to impose the eligibility requirements on cellular providers apply equally with regard to incumbent wide-area SMRs. Furthermore, the Budget Act's and the Second Report and Order's requirement of symmetrical regulatory treatment of substantially similar mobile radio services require that the two services be regulated in the same manner.

In conclusion, while the record is inconclusive as to the need for one spectrum cap applicable to all CMRS providers, it is

^{7.} Broadband PCS MO&O at par. 104.

^{8.} FNPRM at par. 15.

clear that the law requires the same cap to apply to all providers of substantially similar CMRS services. Accordingly, the restrictions on the amount of PCS spectrum that cellular providers can acquire in their cellular service territories must be applied equally to wide-area SMRs and any other providers of substantially similar CMRS services. 9

Respectfully submitted,

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^{9.} Cellular licenses are issued for different geographical territory than SMR licenses. However, the eligibility requirement can still be applied to SMR licensees within their defined geographic territory consistent with the manner in which it is applied to cellular licensees within their geographic territory.

CERTIFICATE OF SERVICE

I, Melinda L. Mills, hereby certify that I have on this 20th day of June, 1994, sent via U.S. First Class Mail, postage prepaid, or Hand Delivery, a copy of the foregoing "Comments of Sprint Corporation" in the Matter of Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252 filed this date with the Acting Secretary, Federal Communications Commission, to the persons on the attached service list.

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